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BY HAND

Magalie Roman Salas, Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W., Room TW-A325
Washington, D.C. 20554

**Re: Review of the Commission's Rules and Policies Affecting the
Conversion to Digital Television
(MM Docket No. 00-39)**

Dear Ms. Salas:

Transmitted herewith on behalf of Grupo Televisa, S.A., are an original and nine (9) copies of its Reply Comments on the *Notice of Proposed Rule Making* in the above-referenced proceeding.

In connection with its representation of Grupo Televisa, S.A., Leventhal, Senter & Lerman P.L.L.C. has registered as a foreign agent under the Foreign Agents Registration Act.

Respectfully submitted,



Sarah R. Iles

Enclosures

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JUN 16 2000

FEDERAL COMMUNICATIONS COMMISSION
DEPUTY SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)
)
 Review of the Commission's) MM Docket No. 00-39
 Rules and Policies)
 Affecting the Conversion)
 to Digital Television)
 To: The Commission

REPLY COMMENTS OF GRUPO TELEVISA, S.A.

Grupo Televisa, S.A. ("Televisa"), a Mexican corporation, by its attorneys and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, hereby replies to comments filed by National Public Radio, Inc. ("NPR")¹ in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding ("DTV transition proceeding").² Televisa opposes NPR's advocacy of the reallocation of Channel 6 spectrum for digital audio broadcasting ("DAB"), and urges the Commission to avoid any course of action affecting current allocations for the 82-88 MHz band.

Any reallocation or clearing of Channel 6 spectrum for digital audio broadcasting or other

¹ Comments of National Public Radio, Inc. in MM Docket No. 00-39 (filed May 17, 2000) ("NPR DTV Comments").

² Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, Notice of Proposed Rulemaking, MM Docket No. 00-39 (released March 8, 2000) ("DTV NPRM").

broadcast purposes would have extremely detrimental public interest, including international, consequences. First, any such action would completely undermine existing Channel 6 broadcasters, including San Diego Fox affiliate XETV, a Mexican station owned by Televisa through subsidiaries. Second, usurpation of the Channel 6 band for DAB or other purposes would violate the United States' international obligations regarding spectrum usage within 400 kilometers of the U.S.-Mexican border.³ Third, reallocation of the 82-88 MHz spectrum would prohibit current U.S. Channel 6 licensees from continuing to broadcast on their allotted NTSC channels while converting to digital, as permitted under certain circumstances by the Balanced Budget Act of 1997.⁴

Station XETV is the sole Fox affiliate serving the San Diego region. Consequently,

³ See Agreement Between the United States of America and the United Mexican States Concerning Assignment of Television Channels Along United States-Mexican Border, TIAS 5043 (Apr. 18, 1962) ("1962 VHF Agreement") (assigning exclusive use of Channel 6 to Mexico in the Baja California area immediately adjacent to San Diego); Memorandum of Understanding Between the Federal Communications Commission of the United States of America and the Secretaria de Comunicaciones y Transportes of the United Mexican States Related to the Use of the 54-72 MHz, 76-88 MHz, 174-216 MHz and 470-806 MHz Bands for the Digital Television Broadcasting Service Along the Common Border (July 22, 1998) (governing digital television channels within 275 kilometers of the U.S.-Mexican border and reiterating the NTSC channel allotments established by the 1962 VHF Agreement).

⁴ See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251, § 3003, codified as 47 U.S.C. § 309(j)(14)(B). The legislation grants television broadcasters undergoing the transition to DTV an extension of the current DTV implementation deadline under certain circumstances, including the inability of certain local network affiliates to implement digital broadcasting despite exercising due diligence, the unavailability of digital-to-analog converter technology in the requesting station's local market, and the inability of 15 percent or more of the TV households in the station's market to receive local DTV broadcast signals by the December 31, 2006 target date.

reallocating the TV Channel 6 broadcast frequency for radio services in the San Diego area could interfere with the ability of the nearly one million households in the San Diego DMA to receive popular Fox network programming. Despite the potential public interest benefits of increased public radio broadcasting, a reduction in U.S. consumers' viewing choices and degraded reception of popular network television programming is too high a price for the expansion of public radio touted by NPR.⁵ As noted by Televisa in the DAB proceeding⁶ and explicitly acknowledged by NPR in its DTV transition proceeding comments,⁷ NPR's support of the reallocation of the Channel 6 spectrum to DAB is motivated primarily by an acquisitive desire for more spectrum for public radio use.

In support of its opposition to any reallocation of the Channel 6 spectrum, Televisa hereby incorporates by reference its Comments⁸ in the Commission's DAB proceeding,⁹ which are attached as Appendix A. In that proceeding, Televisa demonstrated that (1) a Commission plan to reallocate Channel 6 spectrum would violate the United States' treaties with Mexico

⁵ See NPR DTV Comments at 2-3 (quoting from NPR's Comments in MM Docket No. 99-325 (filed Jan. 24, 2000)).

⁶ See Televisa Reply Comments in MM Docket No. 99-325 at 4 (filed Feb. 22, 2000) ("Televisa DAB Reply Comments").

⁷ NPR DTV Comments at 2-3.

⁸ Comments of Grupo Televisa, S.A. in MM Docket No. 99-325 (filed Jan. 24, 2000) ("Televisa DAB Comments") (attached as Appendix A).

⁹ Digital Audio Broadcasting Systems And Their Impact On the Terrestrial Radio Broadcast Service, Notice of Proposed Rulemaking, MM Docket No. 99-325 (released Nov. 1, 1999).

prohibiting interference with the 82-88 MHz band in the trans-border regions, and could potentially result in an international dispute straining U.S.-Mexican relations,¹⁰ and (2) usurpation of the Channel 6 frequency would undermine U.S. NTSC Channel 6 licensees' statutorily mandated opportunity to continue broadcasting in the 82-88 MHz band while undergoing their own conversion to digital service.¹¹

As Televisa noted in the DAB proceeding, the majority of commenters in that proceeding oppose reallocation of the 82-88 MHz band to accommodate DAB.¹² Moreover, any plan to reallocate Channel 6 purportedly to maximize efficiency of DTV broadcast allotments would directly contravene the FCC's express commitment to "attempt[] to provide all eligible broadcasters with a DTV allotment within channels 2-51 without bias against the use of any channel in this band."¹³ Before acceding to NPR's request, the Commission would have to find that the public interest justifies such radical surgery. Clearly, neither the record in the DAB proceeding nor that in the present DTV transition proceeding even remotely supports such extreme action.

¹⁰ Televisa DAB Comments at 3-4.

¹¹ Televisa DAB Comments at 4-5.

¹² Televisa DAB Reply Comments at 2-4.


¹³ Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service, Sixth Report and Order, 12 FCC Rcd 14588, 14624 (1997) (emphasis added; citation omitted).

CONCLUSION

Any Commission action reallocating or clearing the 82-88 MHZ band would detrimentally impact current users of TV Channel 6 and their viewers, violate the United States' international obligations to refrain from interference with the Channel 6 spectrum in border regions, and negate the possibility of U.S. Channel 6 licensees continuing to broadcast on their NTSC spectrum during the transition to digital service. For these reasons and the others set forth herein, Televisa urges the Commission to refrain from interfering in any way with current usage of the 82-88 MHZ band, for DAB or any other purpose.

Respectfully submitted,

GRUPO TELEVISA, S.A.

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June 16, 2000

Its Attorneys

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
)	
Digital Audio Broadcasting Systems)	MM Docket No. 99-325
And Their Impact On the Terrestrial Radio)	
Broadcast Service)	
To: The Commission		

COMMENTS OF GRUPO TELEVISA, S.A.

Grupo Televisa, S.A. ("Televisa"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, 47 C.F.R. § 1.415, hereby comments on the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.¹ Televisa, a Mexican corporation, has an interest in this proceeding by virtue of its ownership, through subsidiaries, of Station XETV (Channel 6), Tijuana, Mexico. Televisa urges the Commission to avoid any implementation of digital audio broadcasting ("DAB") technology that utilizes the 82-88 MHz band, since such use would violate the United States' international obligations regarding spectrum usage along its borders.

¹ Digital Audio Broadcasting Systems And Their Impact On the Terrestrial Radio Broadcast Service, MM Docket No. 99-325 (released Nov. 1, 1999) ("NPRM").

Station XETV is the Fox affiliate serving the San Diego, California market. Its signal is broadcast from Tijuana, Mexico, on TV Channel 6, *i.e.*, the 82-88 MHz band, pursuant to the below-described VHF Agreement between the United States and Mexico. The usurpation of the Channel 6 frequency for U.S. DAB use would harm XETV, in violation of both the terms and the spirit of the bilateral treaties governing the coordination of frequencies in the U.S.-Mexican border regions.

Specifically, use of the 82-88 MHz band within 400 kilometers of the U.S.-Mexican border is governed by the *Agreement Between the United States of America and the United Mexican States Concerning Assignment of Television Channels Along United States-Mexican Border*, TIAS 5043 (Apr. 18, 1962) (the “VHF Agreement”), while the *Memorandum of Understanding Between the Federal Communications Commission of the United States of America and the Secretaria de Comunicaciones y Transportes of the United Mexican States Related to the Use of the 54-72 MHz, 76-88 MHz, 174-216 MHz and 470-806 MHz Bands for the Digital Television Broadcasting Service Along the Common Border* (July 22, 1998) (the “DTV MOU”) governs U.S. and Mexican digital television (“DTV”) channels within 275 kilometers of the common border. In the VHF Agreement, Mexico is assigned exclusive use of Channel 6 in the Baja California area immediately adjacent to San Diego; this NTSC allocation is reiterated in the DTV MOU establishing Mexican DTV allotments. The VHF Agreement requires coordination between the governments of the United States and Mexico when a change in the use

of the VHF broadcast spectrum is proposed near their common border,² a provision which is incorporated by reference into the DTV MOU.³

The Commission's proposal to reallocate Channel 6 for DAB service wholly ignores the United States' obligation to refrain from interference with the frequency allocations in the cited treaties, including the 82-88 MHz band, along the U.S.-Mexican border. Although the Commission proposes to reallocate this band only "at the end of the DTV transition,"⁴ this spectrum reallocation plan fails to consider that the transition will not occur uniformly in the international border regions shared with Mexico and Canada, because non-U.S. broadcasters are not subject to the DTV transition plan mandated by the Commission. If 82-88 MHz is reallocated to DAB in the U.S. while Channel 6 television stations in the border regions continue to broadcast on the same frequency, disruption of such Channel 6 signals will be an inevitable, adverse result of the Commission's proposed plan. Such interference with broadcast signals in the 82-88 MHz band would be in direct violation of the cited international treaties governing transmissions in the

² See VHF Agreement at ¶ J, §§ 2-3 (specifying that non-negotiated changes in the use of allocated TV channels are only permitted "[w]hen a channel assignment can be relocated or an additional channel assigned without derogation of the separation requirements [preventing interference] . . ."); see also Report on International Negotiations, Spectrum Policy and Notifications, Planning & Negotiations Division, International Bureau, FCC (July 1999) at Appendix A (listing U.S. obligations under its bilateral spectrum usage agreements with Mexico and Canada).

³ See DTV MOU at § 5.

⁴ NPRM at ¶ 41.

trans-border regions, as well as of FCC Rule 73.1650, requiring all broadcast authorizations to comply with U.S. international obligations including U.S.-Mexico TV broadcasting agreements. Thus, the Commission's choice of the new frequency allocation plan for DAB would certainly provoke opposition from the Mexican government, and could potentially result in an international dispute straining U.S.-Mexican relations.⁵

In the domestic arena, the Commission's proposed DAB usage of the 82-88 MHz band could be incompatible with the Balanced Budget Act of 1997, provisions of which permit an extension of the DTV transition deadline when circumstances warrant such relief.⁶ If the

⁵ Such relations have on occasion already been strained by the efforts of a San Diego radio broadcaster operating at 88.3 MHz, immediately adjacent to XETV's Channel 6 frequency, to increase power to an extent that would be impermissible under FCC Rule 73.525 ("TV Channel 6 protection") if XETV were a U.S. licensee. In response to protests from the Mexican Government, the staffs of the Commission's International and Mass Media Bureaus have recognized the importance of assuring that U.S. viewers have unimpeded access to XETV's signal, and continue to seek to implement a solution to the matter negotiated by the private parties and both governments. See Letter of Linda Blair, Chief, Audio Services Division, Mass Media Bureau, and Richard B. Engelman, Chief, Planning and Negotiations Division, International Bureau, to James S. Bubar, Esq., *et al.* (June 13, 1997) ("The SDCCD application . . . would if granted, potentially cause interference to viewers in San Diego of Mexican TV station XETV, Channel 6. . . . [T]he Mexican administration intervened to express its objections to the potential interference problems. . . . Considering the unusual nature of this situation and the international interests now at stake, the best solution would be one that was developed cooperatively. . . .").

⁶ See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251, § 3003, codified as 47 U.S.C. § 309(j)(14)(B). The legislation grants television broadcasters undergoing the transition to DTV an extension of the current DTV implementation deadline under certain circumstances, including the inability of certain local network affiliates to implement digital broadcasting despite exercising due diligence, the unavailability of digital-to-analog converter technology in the

Commission were to adopt a DAB plan that allocates the Channel 6 frequency exclusively to digital audio broadcasters by a date certain as it seems to contemplate, those provisions of the Balanced Budget Act that grant flexibility with respect to the conclusion of the DTV transition would be thwarted. In addition, the Commission has no legitimate basis for eliminating NTSC Channel 6 licensees' opportunity to elect to continue broadcasting on that frequency when they convert to all-digital service.⁷ Channel 6 is within the designated DTV "core" -- which consists of Channels 2-51 -- and there may well be U.S. broadcasters that plan to provide DTV service on Channel 6.⁸

requesting station's local market, and the inability of 15 percent or more of the TV households in the station's market to receive local DTV broadcast signals by the December 31, 2006 target date.

⁷ At NPRM n.93, the FCC states it "would, clearly, not permit Channel 6 television licensees to make such an election" if it pursues DAB service at 82-88 MHz.

⁸ See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, 12 FCC Rcd 14588, 14628 (¶ 84) (1997) ("We will also allow broadcasters, wherever feasible, to switch their DTV service to their existing NTSC channels at the end of the transition if they so desire. Such channel switches would be permitted provided that the station's existing channel is within the final DTV core spectrum."); Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, 13 FCC Rcd 7418, 7435-37 (1998) (expanding the DTV core to include channels 2-51, and contemplating that stations may use existing NTSC Channel 6 allotments for DTV); Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, 14 FCC Rcd 1348, 1373-74 (¶¶ 54-57) (1998) (denying a request to exclude Channel 6 from the DTV core spectrum).

CONCLUSION

The Commission's alternative DAB model utilizing the 82-88 MHz band would result in substantial and problematic interference to current users of TV Channel 6, both foreign and domestic. The proposed plan fails to consider international agreements binding the U.S. to non-interference with Channel 6 along U.S. borders. For these reasons and the others set forth herein, Televisa urges the Commission to implement DAB using means that will not interfere in any way with the 82-88 MHz band.

Respectfully submitted,

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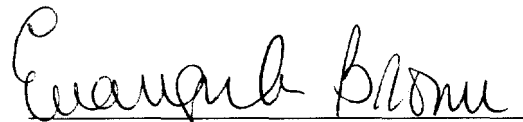
January 24, 2000

Its Attorneys

CERTIFICATE OF SERVICE

I, Evangula Brown, hereby certify that a true and correct copy of the foregoing Reply Comments was sent by first class mail this 16th day of June, 2000 to the following:

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Evangula Brown